

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed May 9, 2007 (the “Office Action”). Claims 8, 16-24, 28, 38 and 46-67 were cancelled in a previous amendment. Claims 34-37, 39-45 and 72-78 have been cancelled without prejudice in the present amendment. Claims 1-7, 9-15, 25-27, 29-33, and 68-71 remain for consideration. Independent claims 1, 15, 25 and 68 have been amended in the present amendment.

Section 103 Rejections

Caceres in view of Gleeson

In the Office Action, the Examiner rejected Claims 1-7, 9-15, 25-27, 29-37, 39-45, and 68-78 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,588,732 to Caceres et al. (“Caceres”) in view of U.S. Patent Application Publication 2001/0047741 to Gleeson et al (“Gleeson”). With respect to the rejections as applied to Claims 34-37, 39-45 and 72-78, these claims have been cancelled without prejudice in the present amendment and as such, Applicants submit that the rejection with respect to these claims is rendered moot.

In an effort to advance this case to allowance, Applicants briefly discuss the main reference cited by the Examiner in support of the 103 rejections, Caceres. Caceres is directed to a fiberglass fencing system using elongate components made of fiberglass plastic (Abstract). Caceres’ fence system is formed by a pultrusion process which combines a resin and reinforced plastic fibers, and then pulling the combination through a die. *See* Caceres Col. 3, lines 1-6. If texture is desired for the fence components, the texture is not imprinted into the molten resin, but rather, Caceres requires the texture to be applied to the component in the form of a laminate (“a layer of resin-impregnated fiber mesh is placed on each outwardly opposing face 20 and drawn through a shaping die” – *See* Caceres Col. 3, lines 29-32). If color is desired, it is molded into the laminate. *See* Caceres Col. 3, line 36.

Applicants submit that one of skill in the art would not be motivated or have any reasonable expectation of success of modifying Caceres’ fiberglass fencing panel to be constructed of the fiber cement building material as taught by Gleeson, or further, to yield a fencing system employing individual fiber cement members, “wherein the front and the back

surfaces of each individual member are imprinted to form an imprinted front surface and an imprinted back surface, wherein such imprinted front surface and such imprinted back surface are not formed by molding the front and back surfaces or applying an external laminate” as recited in Applicants’ present claims 1 and 25. Further, even if combined, the combined references do not recite all of the claim limitations, such as for example, the limitations found in Applicants’ present claims 1 and 25. In addition, neither of the references, alone or in combination, recite a fence system having a plurality of individual fiber cement members which comprise fiber cement having fibers, each having a front and back surface, which “contain an embossed pattern such that one or more fibers along the front surface and the back surface are depressed relative to other fibers in the fiber cement” as recited in Applicants’ present claim 15. Further, neither of the references, alone or in combination, recite elongated members made of fiber cement, wherein the elongated member has a pattern formed on its front and back surface, “such that one or more fibers along the front surface and the back surface are depressed relative to other fibers in the fiber cement” as recited in Applicants’ present claim 68.

For the foregoing reasons, Applicants respectfully request withdrawal of the rejections under Section 103.

Newberry in view of Gleeson

In the Office Action, the Examiner rejected Claims 25-27, 29-33 and 68-78 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 3,801,072 to Newberry, Jr. in view of Gleeson. With respect to the rejections as applied to Claims 72-78, these claims have been cancelled without prejudice in the present amendment and as such, Applicants submit that the rejection with respect to these claims is rendered moot.

Newberry is directed to a process for producing a fiberglass fence panel using a mold, in which a model fence is molded and replicated in fiberglass (see Abstract; Col. 1, line 35-43). Each face of the model fence is molded one side at a time, and if the resulting panel is to exhibit the physical appearance of both major faces, two molds are required. See Newberry Col. 3, lines 45-50. Newberry describes a lengthy process for forming each of the two required molds, including providing a sheet of fiberglass mat, fiberglass cloth, and polyurethane resin. The

composite layer is allowed to “cure for approximately 24 hours” Thereafter, two layers of fiberglass mat and one layer of fiberglass cloth are positioned over the first layer...and again saturated with polyurethane resin. “The composite layer is then allowed to cure for another 24 hours.” *See Newberry, Col. 2, line 41-59.* Applicants submit that one of skill in the art would not be motivated, or have any reasonable expectation of success, of modifying Newberry’s fiberglass fence panel produced by a mold process, and/or to replace Newberry’s fiberglass with the fiber cement building material of Gleeson. Further, there is no reason to combine or any degree of predictability of combining the reference to yield a fencing system employing individual fiber cement members, “wherein the front and the back surfaces of each individual member are imprinted to form an imprinted front surface and an imprinted back surface, wherein such imprinted front surface and such imprinted back surface are not formed by molding the front and back surfaces or applying an external laminate” as recited in Applicants’ present claim 25. Further, even if combined, the combined references do not recite all of the claim limitations, such as for example, the limitations found in Applicants’ present claims. In addition, neither of the references, alone or in combination, recite elongated members made of fiber cement, wherein the elongated member has a pattern formed on its front and back surface, “such that one or more fibers along the front surface and the back surface are depressed relative to other fibers in the fiber cement” as recited in Applicants’ present claim 68.

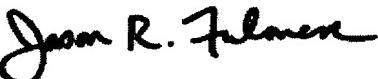
For the foregoing reasons, Applicants respectfully request withdrawal of the rejections under Section 103.

Applicants respectfully submit that one of ordinary skill in the art at the time of Applicants’ invention did not contemplate the fiber cement fence systems or components as being claimed in Applicants’ present application, and further, would have no reason to modify or combine the prior art of record to achieve Applicants’ fencing system and components. Applicants respectfully request that the rejection of all pending claims under Section 103 be withdrawn.

CONCLUSION

In light of the amendments and remarks set forth above, Applicants respectfully submit that the Application is now in allowable form. Accordingly, Applicants respectfully request consideration and allowance of the currently pending claims. It is believed that no additional fees are due at this time. If this is incorrect, Applicants hereby authorize the Commissioner to charge any fees, other than issue fees, that may be required by this paper to Deposit Account No. 07-0153. The Examiner is respectfully requested to call Applicants' Attorney for any reason that would advance the current application to issue.

Respectfully submitted,



Jason R. Fulmer
Registration No. 46,715
Gardere Wynne Sewell LLP
Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Telephone: 214.999.4487
Facsimile: 214.999.3487
jfulmer@gardere.com
ATTORNEY FOR APPLICANTS
October 31, 2007